BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TERENCE BARNES Claimant	
VS.	Docket No. 198,530
CORNEJO & SONS, INC.	Docket No. 196,550
Respondent)	
ST. PAUL FIRE & MARINE INSURANCE COMPANY	
Insurance Carrier	

ORDER

Respondent appeals from a March 30, 1995 Preliminary Hearing Order for medical care.

Issues

Respondent contends the Administrative Law Judge has exceeded his jurisdiction by ordering benefits because the claimant failed to meet his burden of establishing the injury arose out of and in the course of his employment and because the evidence indicates the injury was contributed by claimant's use of alcohol or drugs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that the Order should be affirmed. Claimant has testified that he injured his elbow and shoulder when he slipped and fell off the step of his truck. While there were no witnesses to the accident and injury, claimant reported the injury on the same day and received medical treatment. Nothing in the record convincingly contradicts claimant's testimony and the Appeals Board concludes that for preliminary hearing purposes claimant has met his burden of establishing that he suffered an injury arising out of and in the course of his employment.

In support of its contention that the injury was contributed to by claimant's use of drugs or alcohol, respondent offers evidence that claimant was on probation for a

IT IS SO ORDERED.

conviction relating to possession of drugs and probation was revoked because claimant failed a breath analysis on the Saturday before the injury on Monday. The evidence also indicates claimant refused to allow a urinalysis following the accident. These circumstances raise suspicions; they do not meet respondent's burden of establishing that the injury was contributed to by use of alcohol or drugs.

WHEREFORE, the Appeals Board finds that the Order of Administrative Law Judge John D. Clark dated March 30, 1995 should be, and the same is hereby, affirmed.

Dated this day of J	une 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS Vincent A. Burnett, Wichita, KS John D. Clark, Administrative Law Judge George Gomez, Director